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Attorney for Plaintiff

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

MARSHA M. KRESGE,

Plaintiff.

Case No. 2:16-cv-03041-MMD-VCF

VS.

NANCY A. BERRYHILL
ACTING COMMISSIONER of
Social Security,

**STIPULATED MOTION FOR
ATTORNEYS' FEES UNDER THE
EQUAL ACCESS TO JUSTICE ACT**

Defendant.

IT IS HEREBY STIPULATED by and between the parties through their undersigned counsel, subject to the approval of the Court, that Plaintiff will be awarded attorney fees in the amount of FIVE THOUSAND FIVE HUNDRED EIGHTEEN DOLLARS AND 60/100 (\$5518.60) under the Equal Access to Justice Act (EAJA), 28 U.S.C. § 2412(d); and no costs or expenses. This total amount represents compensation for all legal services rendered on behalf of Plaintiff by counsel in connection with this civil action, in accordance with 28 U.S.C. §§ 2412(d), 1920.

To satisfy the requirements of the Equal Access to Justice Act, Plaintiff alleges that the position of Defendant was not substantially justified, that Plaintiff had a net worth of less than two million dollars at the time this civil action was filed, that Plaintiff's attorneys have

1 expended at least 43 hours in connection with this matter, and that the current applicable EAJA
2 hourly rate, as adjusted for inflation, is \$195.95 (pursuant to the 9th Circuit Memorandum,
3 available on the 9th Circuit website; *see* <http://www.ca9.uscourts.gov/>).

4 After the Court issues an order for EAJA fees to Plaintiff, the Defendant will consider
5 any assignment of EAJA fees to Richard Harris, Esq. The assignment is contained in the Client
6 Fee Agreement, attached. Pursuant to *Astrue v. Ratliff*, 130 S.Ct. 2521, 2252-2253 (2010), the
7 ability to honor any such assignment will depend on whether the fees are subject to any offset
8 allowed under the United States Department of the Treasury's Offset Program. After the order
9 for EAJA fees is entered, the Defendant will determine whether they are subject to any offset.

10 If the Department of the Treasury determines that Plaintiff does not owe a federal debt,
11 then the government shall cause the payment of fees to be made directly to Richard Harris,
12 Esq., pursuant to any assignment executed by Plaintiff. Any payments made shall be delivered
13 to Richard Harris, Esq.

14 This stipulation constitutes a compromise settlement of Plaintiff's request for EAJA
15 attorney fees and does not constitute an admission of liability on the part of Defendant.
16

17 DATED this 4th day of August 2017.

DATED this 4th day of August, 2017.

19 /s/ Joshua R. Harris
20 **JOSHUA R. HARRIS, ESQ.**
Richard Harris Law Firm
21 801 S Fourth Street
Las Vegas NV 89101
22 **Of Attorneys for Plaintiff**

19 /s/ Ellinor Coder
(signed per email authorization 8/3/2017)
20 **ELLINOR CODER, ESQ.**
Special Assistant United States Attorney
160 Spear Street, Suite 800
21 San Francisco CA 94105
Of Attorneys for Defendant

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2 **UNITED STATES DISTRICT COURT**
3
4 **DISTRICT OF NEVADA**

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6 MARSHA M. KRESGE,

Case No. 2:16-cv-03041-MMD-VCF

7 Plaintiff,

8 vs.

9 **ORDER FOR EAJA**
10 **FEES**

11 NANCY A. BERRYHILL,
12 ACTING COMMISSIONER OF SOCIAL
13 SECURITY,

14 Defendant.

15 Based on the Motion being filed, it is hereby ORDERED that attorneys' fees in the amount
16 of FIVE THOUSAND FIVE HUNDRED EIGHTEEN DOLLARS AND 60/100 (\$5518.60),
17 pursuant to the Equal Access to Justice Act 28 U.S.C. § 2412, shall be awarded to Plaintiff; made
18 payable to and mailed to Plaintiff's attorney at the address above. There are no costs or expenses.

19 DATED this 7th day of August, 2017.



20 HON. CAM FERENBACH
21 UNITED STATES MAGISTRATE JUDGE
22 or
23 HON. MIRANDA M. DU
24 UNITED STATES DISTRICT JUDGE

25 presented by:

26 /s/ Joshua R. Harris

27 **JOSHUA R. HARRIS, ESQ.**, Nevada State Bar No. 9580

28 RICHARD HARRIS LAW FIRM

29 801 S FOURTH ST. LAS VEGAS NV 89101

30 Ph: (702) 444-4392 Fx: (702) 444-4455

31 Email: josh@richardharrislaw.com

32 **Of Attorneys for Plaintiff**

FEDERAL COURT RETAINER AGREEMENT

I employ Joshua Harris, Esq. as my Attorney in Federal Court in the Social Security Disability case. My attorney is authorized to file documents and act for me in all respects. I agree that another attorney may be employed or associated as co-counsel by RICHARD HARRIS LAW FIRM, and that any such attorney may assist in my representation in this matter, under the terms of the fee agreement which follows. My attorney is authorized to disclose information in my file to other attorneys, representatives, or government officials with whom my attorneys deem it appropriate to confer regarding matters related to my case. If my attorneys procure a remand for another hearing, I understand that my representative who appeared at the Administrative hearing will continue to handle my case. I authorize my attorney to divide the work on my case with one or more additional attorneys, and to share fees among attorneys in a manner which shall be left to the sole discretion of the attorneys, so long as such fee sharing does not increase the total fee owed by me beyond the amount allowed by law. I understand the scope of my attorneys' practice currently is focused on Federal Court appeals, and if my attorney obtains an order sending my case back for another hearing, the original representative will continue representation at that Administrative hearing.

The scope of representation of this agreement is limited to the continuing appeal of one specific adverse determination or decision, made by the Social Security Administration, in my claim for Social Security Disability and/or SSI benefits. My attorneys have not agreed to represent or advise me with regard to any other claim. The representation herein may terminate, at the sole discretion of the attorney, at (or any time after) the time a decision is issued by a court or by the Social Security Administration.

I agree to re-pay my attorneys all out of pocket expenses and costs, namely the \$400.00 filing fee, incurred by my attorneys in pursing this claim even if my attorneys are not successful in this representation.

I and my attorneys agree that the federal court attorneys' fee shall be the GREATER of the following: 25 percent of the past-due benefits resulting from my claim or claims. (I understand this may exceed \$750.00 per hour) OR the amount of any award ordered pursuant to the Equal Access to Justice Act (EAJA). EAJA fees are paid by an agency of the U.S. government- not out of the claimant's past-due benefits. To the fullest extent permissible under law, I assign to my attorneys the right to receive any EAJA award or check in payment of award directly in the attorney's name. My attorneys shall have the beneficial interest in the EAJA fee award. See 31 C. F. R. § 285(e)(5) (2010). If the government issues checks in my name for fees, costs, or expenses under any law which shifts to the government the responsibility for making such payments, I authorize my attorneys to sign and deposit such checks on my behalf and immediately to take any amounts to which the attorneys are entitled under this contract. I authorize my attorneys to request the court award beneficial interest on any costs-expenses and/or EAJA fees to my attorney, and that the government authority responsible for payment of such awards pay and all amounts awarded directly to my attorneys in a check made payable to my attorneys and mailed to attorneys' address, or via deposit to my attorneys' account. If any portion of a fee awarded in my case is taken by the federal government to pay any debt I owe, I agree immediately to reimburse my attorneys for the amount of the fee taken in payment of my debt.

I understand and agree that my attorneys may receive remanding my case EAJA fees for obtaining a court order remanding my case for further administrative proceedings, even if I am not ultimately found disabled after such further administrative proceedings. In order for my attorneys to become entitled to federal court fees paid out of my retroactive benefits, however, there must be a finding of disability (made either by the court or by the Social Security Administration after remand from the court) followed by an award of benefits to me and/or to other beneficiaries in association with my claim. If the Social Security Administration sends to my attorney a court fee authorized under 42 USC § 406(b) which is larger than the fee my attorney is entitled to keep after off-setting any EAJA fee previously received by my attorney in connection with my claim, I instruct my attorney, on my behalf and as a convenience to me, to forward to my administrative representative (if any) up to but not in excess of the amount of any then unpaid fee due (or pending agency approval!) from me for representation before the agency.

The total fee for both Title II and Title XVI (SSDI & SSI) claim may not exceed the amounts stated above.

12-29-14, Marsha Kresge, Richard Harris
DATE MARSHA KRESGE RICHARD HARRIS FOR JOSHUA HARRIS

ASSIGNMENT OF AWARD OF EQUAL ACCESS
TO JUSTICE ATTORNEY FEES

I, MARSHA KRESGE, hereby assign any entitlement I may have to a fee under the Equal Access to Justice Act (EAJA), 28 U.S.C. 2412(d), to my attorney, Joshua Harris, Esq. I acknowledge that the fee compensates my attorney for representing me before the United States District Court. Therefore, I ask that the EAJA award be made payable to my attorney, Joshua Harris, and not to me as Plaintiff.

Dated: 12-29-14

Marsha Kresge
MARSHA KRESGE

TIMESHEET

CLIENT: Kresge
 ATTORNEY: HARRIS

Date	Activity	Time
12/7/16	review case for USDC	.9
12/27/16	advise paralegal re: problems contacting client	.1
12/30/16	Draft Complaint	.8
12/30/16	review signed docs and Complaint	.1
12/31/16	File IFP, Complaint & Cert of interested parties	.2
12/31/16	Review cert of interested parties, cover sheet and IFP	.1
1/3/17	rvw judge assignment; discuss consent to magistrate	.1
1/13/17	rvw ct order re: IFP and service	.1
1/25/17	discuss changing captions due to change in Commissioner (Colvin to Berryhill)	.1
03/17/17	email with OGC re stipulation for extension to answer	.2
3/18/17	def req to stip to ext for Answer	.1
4/19/17	email from OGC paralegal re disk	.1
4/19/17	review Answer	.1
4/22/17	receive trans; inspect (paper file)	.2
6/18/17	review file/read transcript/ annotate medical records	3
6/19/17	finish reading transcript (hearing testimony); read and annotate ALJ decision	4.5
6/20/17	begin writing opening brief; outline procedural hist; begin statement of facts	4.4
6/21/17	continue writing opening brief; draft args, legal research	3.5
6/22/17	continue writing opening brief; write args	3.9
6/23/17	finish writing opening brief ;edit, finalize, file opening brief	4.9
7/7/17	note association atty EC	.1

7/20/17	def ext	.1
7/21/17	phone message, emails from OGC	.1
8/1/17	review proposed stip remand terms, review brief/issues	.2
8/2/17	confer, advise client ; emails w/ OGC, accept offer	.2
8/3/17	rvw filed stip for remand	.1
	total hrs	28.2
	total 2016: 2.2 @ \$192.68*	\$423.90
	total 2017: 26 @ \$195.95	\$5094.70
	Total	\$5518.60

*EAJA rates pursuant to 9th Circuit website memorandum/*Thangaraja*.